

DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 12 1996
Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's Regulatory)
Policies to Allow Non-U.S.-Licensed Space)
Stations to Provide Domestic and International)
Satellite Service in the United States)
)
and)
)
Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
eliminate the Licensing Requirement for)
Certain International Receive-Only Earth)
Stations)

IB Docket No. 96-111

CC Docket No. 93-23
RM-7931

COMMENTS OF CHARTER

Charter Communications International, Inc. ("Charter"), an FCC common carrier licensee under both Title II and III of the Communications Act, submits these comments pursuant to the Commission's Notice of Proposed Rulemaking released May 14, 1996, in the above-captioned matter ("NPRM").

Summary

Charter respectfully submits that it would be premature for the Commission to adopt rules at this stage, given the complexity of the issues, the paucity of specific proposals in the NPRM, and the absence of any findings showing a need for any rules. It would be more prudent for the Commission to use this proceeding for fact and idea gathering purposes, to be followed-up, if deemed necessary, by a further NPRM with more definitive proposed rules.

The Mexican Solidaridad Satellite System, which is essential to Charter's business plans and beneficial to its customers, should be excluded from any general rules that might ultimately be adopted by the Commission. The competitive entry of Mexican and U.S. satellites into the markets of these respective countries is specifically governed by a recently-signed bilateral agreement.

Finally, international receive-only satellite earth stations should be deregulated, irrespective of the ownership of the interconnecting international satellites.

Adoption of Rules Would Be Premature

The Commission is proposing to depart from a case-by-case licensing of international satellite earth stations by adopting general rules to govern such licensing. The D.C. Circuit has cautioned the FCC against adopting rules without a commensurate NPRM providing adequate notice and opportunity for comment. United States Telephone Ass'n. v. FCC, 28 F.3d, 1232, (D.C. Cir. 1994). The instant NPRM is more akin to a Notice of Inquiry because it is long on questions and short on tentative conclusions and explicit proposed rules.

The NPRM is vague as to the implementation of the proposed ECO-Sat test¹⁴ to determine the eligibility of foreign satellites for the licensing of connecting U.S. earth stations. Apparently, U.S. earth station applications would be assessed against some undefined de jure and de facto barriers to entry by U.S. satellite systems in, not only the home country of the foreign satellite, but also in the foreign "route" countries falling within the satellite footprint. It is not clear how the FCC would assess or even authoritatively determine any such barriers. Nor is it clear how

¹⁴ "ECO-Sat," for "effective competitive opportunities for satellites," apparently would be applied to both the "home market" of the foreign satellite plus various "route markets" to which service from a U.S. earth station is proposed. NPRM ¶ 2.

the earth station applicant or the protester of the application could obtain data regarding any such barriers or present them credibly to the Commission.

The NPRM recognizes the vagueness inherent in the application of the ECO-Sat test. For example, the NPRM recognizes as "troublesome" the application of ECO-Sat in a "truly point-to-multipoint context," in which video signals are distributed from a U.S. earth station to multiple countries via a foreign satellite. (NPRM ¶ 28.) Some of the so-called "route" countries might individually pass the ECO-Sat test while others might not. There is the additional problem presented when a U.S.-originated signal lands by satellite in one country and is transported terrestrially into an adjoining country. Not only would the application of ECO-Sat in these instances be difficult, but the FCC's proposed extraterritorial enforcement would open the regulation of global telecommunications to international discord. ECO-Sat might retard rather than promote the Commission's laudable objective of exporting U.S.-style competition.

The NPRM does not address the issue of a foreign satellite owned in whole or part by U.S. investors.²⁴ How would the ECO-Sat test apply to such satellites? Would U.S.-licensed satellites with a permissible level of foreign ownership be accorded a preference over foreign-licensed satellites with a comparable level of U.S. ownership?

The Commission should use the record developed in this proceeding to decide whether the adoption of any rules is, indeed, warranted. If rules appear to be warranted, a further NPRM longer on tentative rules and shorter on questions and vagueness could be issued. It is possible, though doubtful, that a complete record justifying specific rules can be developed at this stage.

²⁴ NPRM ¶ 30 mentions an "ownership-based approach," but is devoid of any analysis. It is not clear whether this paragraph even contemplates U.S. ownership in a foreign satellite. The paragraph appears more concerned with the national origin of investors from route countries.

The NPRM candidly acknowledges the Commission's lack of "experience" in the complex areas involved. (NPRM n. 35.)

Need For Rules Is Problematic

The NPRM does not identify the foreign satellites that it proposes to regulate. Nor does the NPRM provide any examples of foreign entry barriers that would or could be surmounted by the enforcement of the ECO-Sat test. We believe that there are a limited number of foreign satellite systems. We also believe that, aside from the home countries, the traffic volumes between the U.S. and the various route countries would be insubstantial.

The interests of the many U.S. earth station operators, often small businesses, should not be subverted to the concerns for the foreign market entry of a few, gigantic U.S. international satellite operators. Nor should the interests of the public in low-cost access to multiple international satellites, both foreign and domestic, be ignored. Indeed, the NPRM recognizes that "U.S. users [will] benefit from greater access to non-U.S. satellites." (NPRM ¶ 9.)

The record produced as a result of the NPRM might enable the Commission to determine whether there is a real need at this time for ECO-Sat type rules. If there is such a need, a further NPRM could be issued laying the necessary foundation for any proposed rules. The instant NPRM is greatly deficient in this regard.

Effect On Future Applications Could Be Devastating

The NPRM's proposal not to apply any future rules retroactively to existing or pending applications, while commendable, begs the question of future earth station applications filed between May 9, 1996 (NPRM adoption date) and the date that any future rules might be promulgated. The Commission has a busy agenda in implementing the Telecommunications Act of

1996. The deficiencies in the NPRM, as illustrated above, could lead to a further NPRM. The public interest would be disserved by a lengthy freeze or delay in processing newly-filed international earth station applications. Accordingly, we submit that international earth station applications should be promptly processed and adjudicated on a case-by-case basis without regard to what rules, if any, the Commission might adopt in the future.

**Mexican Solidaridad Satellite System
Should Be Excluded From Any General Rules**

The competitive entry of Mexican and U.S. satellites into the markets of these respective countries is specifically governed by a recently-signed agreement. It would be imprudent for the Commission to adopt any superseding rules.

On April 30, 1996, Chairman Hundt announced the signing of a "momentous" bilateral agreement permitting Mexican satellite companies to enter the U.S. market and U.S. satellite companies to enter the Mexican market, with likely lower prices for consumers:

"The signing and ratification yesterday of this momentous framework 'Agreement Concerning the Transmission and Reception of Signals from Satellites for the Provision of Satellite Services to users in the U.S. and Mexico' promises important opportunities for U.S. businesses, consumers and programmers. As a result of this Agreement, U.S. satellite companies will be able to compete in the growing Mexican market, as will Mexican companies be able to compete in the U.S. market. Consumers will have more choices as a result of new satellite services entering the U.S. market, and programmers will have more opportunities to distribute their programming to consumers. This expansion of available satellites could also lead to lower prices for satellite capacity, which should result in lower prices for consumers and all users."

Perhaps the NPRM failed to mention this "momentous" U.S.-Mexican Agreement because the May 9-adopted NPRM was drafted prior to the April 30-announced Agreement.

Irrespective of the reason for this glaring omission, the Mexican satellites should be excluded from any general rules adopted by the Commission.

Receive-Only Earth Stations Should Be Deregulated

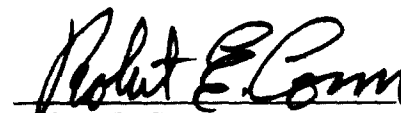
The NPRM sets forth no reasoned analysis supporting the proposed deregulation of U.S. receive-only earth stations operating with U.S. international satellites, but the continued (albeit ECO-Sat more severe) regulation of such stations operating with foreign satellites, including Intelsat. Nor does the NPRM try to justify the FCC's apparent about-face from its pending 1993 proposal to eliminate mandatory licensing of all international receive-only earth stations and to substitute a voluntary registration process, consistent with the successful process earlier applied to domestic receive- only stations.

The Commission should not, we submit, retrogress to a more intrusive, unjustified regulatory scheme, particularly in light of the deregulatory tenets of the Telecommunications Act of 1996.

Conclusion

For the reasons outlined above, no rules should be promulgated as a direct result of the NPRM, other than an across-the-board deregulation of receive-only earth stations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. Conn", written over a horizontal line.

Robert E. Conn
Attorney for Charter

July 12, 1996